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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,432	09/11/2003	Albert J. Geiger	213202.00480	4093
27160 PATENT ADM	7590 12/10/2007 IINISTRATOR	EXAMINER		
KATTEN MU	CHIN ROSENMAN LLI	LANGEL, WAYNE A		
1025 THOMAS JEFFERSON STREET, N.W. EAST LOBBY: SUITE 700			ART UNIT	PAPER NUMBER
WASHINGTO	WASHINGTON, DC 20007-5201		1793	
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		•	12/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	Applicant(s)			
Office Action Summary		10/659,432	GEIGER ET AL.			
		Examiner	Art Unit			
		Wayne Langel	1793			
	The MAILING DATE of this communication app	pears on the cover sheet with the c	orrespondence address			
	Period for Reply					
WHIC - Exter after - If NO - Failu Any r	ORTENED STATUTORY PERIOD FOR REPLICHEVER IS LONGER, FROM THE MAILING DISIONS of time may be available under the provisions of 37 CFR 1.1 SIX (6) MONTHS from the mailing date of this communication. Period for reply is specified above, the maximum statutory period re to reply within the set or extended period for reply will, by statute eply received by the Office later than three months after the mailined patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be timwill apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	N. nely filed the mailing date of this communication. D (35 U.S.C. § 133).			
Status						
1)□	Responsive to communication(s) filed on	·				
•	This action is FINAL . 2b) This action is non-final.					
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims						
4) 又	4)⊠ Claim(s) <u>1-57</u> is/are pending in the application.					
•	4a) Of the above claim(s) is/are withdrawn from consideration.					
	5) Claim(s) is/are allowed.					
6)⊠	⊠ Claim(s) <u>1-57</u> is/are rejected.					
7)🖂	Claim(s) 56 and 57 is/are objected to.					
8)□	8) Claim(s) are subject to restriction and/or election requirement.					
Application Papers						
9)	The specification is objected to by the Examine	er.				
10)🖂	The drawing(s) filed on <u>11 September 2003</u> is/	are: a)☐ accepted or b)⊠ object	ted to by the Examiner.			
	Applicant may not request that any objection to the					
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority (under 35 U.S.C. § 119					
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of:						
1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No						
3. Copies of the certified copies of the priority documents have been received in this National Stage						
application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list of the certified copies not received.						
Attachment(s)						
1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s)/Mail Date						
3) 🛛 Infor	ce of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO/SB/08) er No(s)/Mail Date 9-11-03.	5) Notice of Informal F 6) Other:				

10/659,432 Art Unit: 1793

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 8-37 and 40-55 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hirano et al. Example 1 of Hirano et al discloses coating urea with polyurethane made from polymeric diphenylmethane diisocyanate and polyol, and mixed with polyethylene wax having a melt temperature of 70-80 C. (See also col. 5,, lines 14-22.)

Claims 6, 7, 38, 39, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirano et al. Hirano et al is applied as discussed hereinbefore. It would be further obvious to employ castor oil or a polyol comprising at least one C - C aliphatic moiety as the ployol to form the fertilizer of Hirano et al, since Hirano et al disclose at col. 5, lines 23-33 that the polyol compound is not specifically limited, and it would be within the skill of one of ordinary skill in the art to determine suitable polyols which would function to form the fertilizer of Hirano et al.

10/659,432 Art Unit: 1793

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-57 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-55 of U.S. Patent No. 6,663,686.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are broader than the claims in US 6,663,686.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection based upon 35 U.S.C. 101.

10/659,432 Art Unit: 1793

Claims 7 and 39 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 24 of prior U.S. Patent No. 6,663,686. This is a double patenting rejection.

Claims 56 and 57 are objected to under 37 CFR 1.75 (b) in failing to differ substantially from claims 6 and 38, respectively.

The Drawings are objected to under 37 CFR 1.84 (u)(1) in that the word "Figure" appears on the sole figure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-1353. The examiner can normally be reached on Monday through Friday, 8 am - 3:30 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10/659,432 Art Unit: 1793

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Wayne Langel Primary Examiner

Art Unit 1793